FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 877

IN THE MATTERS

of

THIRD AVENUE TRANSIT CORPORATION, *et al.*,

Debtors.

A. PHILIP WOOLFSON,

Petitioner,

v.

LESTER T. DOYLE, As Trustee in Reorganization, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY BRIEF

A. PHILIP WOOLFSON,
Attorney Pro Se,
50 Broad Street,
New York 4, N. Y.

Adams Press Corp., 82 Beekman Street, N. Y.—Beekman 3-1030-31 110

IN THE

Supreme Court of the United States

OCTOBER TERM 1958

No. 877

IN THE MATTERS

of

THIRD AVENUE TRANSIT CORPORATION, *et al.*,

Debtors.

A. PHILIP WOOLFSON,

Petitioner,

against

LESTER T. DOYLE, as Trustee in Reorganization, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY BRIEF

Introduction

One would infer from a perusal of the briefs filed by the Reorganization Trustee and the Securities and Exchange Commission in opposition to the petition for certiorari that

the sole object of petitioner's motions in the District Court was to permit petitioner's claim of denial of due process to be litigated again. In effect the Reorganization Trustee and the Securities and Exchange Commission aver (1) that there are no new elements of fact which were not or might not have been presented to the District Court in the previous litigation; (2) that under the principle of *stare decisis* the Court of Appeals prior determination of the law of the case should stand; (3) that no legal error was committed in dismissing petitioner's recent appeal as frivolous; and (4) that fundamental and substantial justice will be promoted by this Court's denial of certiorari.

The Question of Criminal Prosecution of the New York Stock Exchange

When the hearing in the District Court on petitioner's motion to mandamus the Securities and Exchange Commission to institute criminal proceedings against the New York Stock Exchange for wilful violation of S.E.C. delisting regulations was adjourned at the request of counsel for the reorganization trustee, petitioner anticipated that a hearing would be had, at which time the Securities and Exchange Commission would present its brief to aid the Court in deciding on the motion. If, as the Commission now maintains, there was a question of statutory construction as to the Commission's discretion to enforce the criminal penalties provided in the Securities and Exchange Act of 1934, such question should properly have been raised initially in the District Court. The primary question would however appear to be that of Commission interpretation of the language of its own delisting regulations and their application. The Commission and the Reorganization Trustee did not come into the Court of Appeals with clean hands when they justified the action of the New York Stock Exchange in delisting the common

stock of debtor some five months after the assets of the debtor had been acquired by Fifth Avenue Coach Lines, Inc., which company on December 16, 1956 had acquired all of the 1,160,000 shares of common stock of the new company, Surface Transit Inc. The delisting action not having taken place until May 4, 1957, this was certainly a new fact that was not before either the District Court or the Court of Appeals in the former proceedings relating to the denial of due process to petitioner.

The Question of the Court's Jurisdiction

The Commission and the Trustee concede that at the time of the District Court's hearings on the question of strict insolvency of debtor, jurisdiction over rates of fare and service of debtor's principal subsidiary, Surface Transportation Corporation of New York (which subsidiary provided some 95% of the gross operating revenues of the system) was lodged with the City of New York, and such regulatory jurisdiction was at the time of the institution of the reorganization proceedings for the debtor and its subsidiaries lodged with the Public Service Commission of the State of New York.

In approaching the question of Congressional intent as to Federal Court jurisdiction over reorganizations of intrastate public utilities the specific circumstances of this reorganization must be kept in mind in the light of the general principles covering utility valuation. Since the only thing that a bus company has to sell is service and since the function of a Public Service Commission having regulatory jurisdiction is to provide a rate of fare which will give the regulated company a reasonable return from the service which it sells, such return being based on the commission's valuation of the bus company's property devoted to the public service, it would seem logical to assume that Congress contemplated, when it made State Public

Service Commission approval of a reorganization plan for an intrastate public utility a condition precedent to Court approval, that (1) the State Public Service Commission would at the time of the institution of reorganization proceedings have jurisdiction to fix rates of fare that would not be confiscatory on the basis of valuation of the company's property, which valuation had previously been approved by the Commission, and (2) that the State Public Service Commission would continue to have jurisdiction throughout the course of the reorganization proceedings over such rates of fare, and that such regulatory jurisdiction would not have terminated prior to the submission of a reorganization plan. In the instant reorganization proceeding the primary problem of debtor was the inability to obtain an adequate rate structure to meet the pressure of increased costs; public transportation policies of the City of New York subordinated economics to political considerations, as is suggested by the statement of the Mayor of the City of New York which appeared in the New York Times on April 25, 1959. The Mayor then said: "I consider the maintenance of a low transit fare important to the city. Our people must be able to get around speedily and cheaply. We have gone to great pains to maintain that fare. And it is today the lowest fare of any major city in the United States. I will make every effort, as I have done till now, to keep it that way." To keep bus fares low private bus companies have had imposed upon them the burden of carrying school children at greatly reduced fares, while their rates of fare to the public were determined on the basis of the rates of fare established by the City of New York for its subsidized subway and bus transit system.

That Congress did not intend to give Federal Courts jurisdiction over intrastate public utilities which were not under the regulatory jurisdiction of State Public Service

Commissions is further suggested by the fact that for corporations other than intrastate public utilities valuation for the purpose of a reorganization plan may be determined on the findings of the Securities and Exchange Commission (which the Court may disregard), but valuation for the purpose of a reorganization plan and whether the reorganization plan is compatible with the public interest must be determined by the Public Service Commission, having regulatory jurisdiction over debtor, independent of the Court's findings, and the Court may not disregard such findings.

The Question of Fraud

Petitioner has set forth at length in the motions submitted to the District Court facts which appear to the petitioner to constitute fraud perpetrated upon the Court. The District Court chose to believe the trustee rather than petitioner. This then resolves itself pretty much into a question of credibility: to petitioner it is inconceivable that an honest trustee and an honest S.E.C. counsel would pursue a course of conduct with respect to the delisting of the debtor's common stock as appears on the record. There is no rule of law which requires stockholders in a Chapter X proceeding to act on the presumption that the trustee and the Securities and Exchange Commission are liars and refuses them redress when they fail to act on that presumption.

CONCLUSION

The reorganization plan is illegal and unconstitutional and the assets of debtor were illegally acquired by Fifth Avenue Coach Lines, Inc. The petition for certiorari should be granted.

Dated, New York, N. Y.
June 2, 1959

Respectfully submitted,

A. Philip Woolfson,
Attorney Pro Se.